JUDGMENT OF THE COURT
15 June 1993 *

In Case C-213/91,

Abertal SAT Ltda, a company governed by Spanish law, established in Reus, Tarragona (Spain), and 18 other organizations of Spanish producers of nuts and locust beans established in Spain, represented by Fernando Pombo García, Ricardo García Vicente and Iñigo Igartua Arregui, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Claude Wassenich, 6 Rue Dicks,

applicants,

v

Commission of the European Communities, represented by Francisco José Santaolalla and Eugenio de March, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Article 1 of Commission Regulation (EEC) No 1304/91 of 17 May 1991 amending Commission Regulation (EEC) No 2159/89 laying down detailed rules for applying the specific measures for nuts and locust beans as provided for in Title IIa of Council Regulation (EEC) No 1035/72 (OJ 1991 L 123, p. 27),

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray, (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and P. J. G. Kapteyn, Judges,

* Language of the case: Spanish.

Advocate General: W. Van Gerven,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 10 March 1993,

after hearing the Opinion of the Advocate General at the sitting on 21 April 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 August 1991, Abertal SAT Limitada and 18 other organizations of Spanish producers of nuts and locust beans ('the applicants') brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of Article 1 of Commission Regulation (EEC) No 1304/91 of 17 May 1991 amending Commission Regulation (EEC) No 2159/89 laying down detailed rules for applying the specific measures for nuts and locust beans as provided for in Title IIa of Council Regulation (EEC) No 1035/72 (OJ 1991 L 123, p. 27).

2 By order of 18 October 1991, the President of the Court dismissed the application for interim relief seeking suspension of the operation of Article 1 of Regulation No 1304/91 pending the Court's judgment on the main application.

3 Council Regulation (EEC) No 789/89 of 20 March 1989 instituting specific measures for nuts and locust beans and amending Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables (OJ 1989 L 85, p. 3), added Title IIa to Regulation No 1035/72 of 18 May 1972 (OJ, English Special Edition 1972 (II), p. 437), as subsequently amended.

4 Title IIa of Regulation No 1035/72 provides for certain aid measures in the nuts and locust beans sector and, in particular, aid for the implementation of quality and marketing improvement plans, submitted by the producers' organizations and approved by the national authorities (Article 14d of Regulation No 1035/72).

5 The plans referred to by this provision are intended to improve, by means of varietal conversion or cultural improvement, the quality of produce from orchards which are given over to producing one homogenous crop and are not scattered among other plantations and, where needed, to improve marketing.

6 Under Article 14d of Regulation No 1035/72 the approved improvement plans qualify for Community aid of 45% for their execution provided they are funded to a level of 45% by the producers' organizations and a level of 10% by the Member State. Funding from the Member State and aid from the Community are subject to a ceiling and are paid over a period of 10 years. The maximum level of aid decreases gradually.

7 The conditions for the approval of improvement plans and, *inter alia*, the detailed rules for the payment of aid for carrying out the plans were laid down by Commission Regulation (EEC) No 2159/89 of 18 July 1989 laying down detailed rules for applying the specific measures for nuts and locust beans as provided for in Title IIa of Council Regulation (EEC) No 1035/72 (OJ 1989 L 207, p. 19).

8 Regulation No 1304/91 amends Regulation No 2159/89 for the second time.

9 Article 1 of Regulation No 1304/91, which is the subject of this action, restricts the conditions under which producers' organizations in the nut and locust bean sector may apply to change plans which have already been approved in order to extend

the surface area covered by the plan. It also restricts the payment of advances on the annual instalment of aid and brings in stricter requirements concerning the administrative information which producers' organizations must supply in order to receive Community aid for improvement plans.

10 Under Article 2 of Regulation 1304/91, these amendments entered into force on 21 May 1991.

11 By separate document lodged at the Court Registry on 23 October 1991, the Commission objected pursuant to Article 91(1) of the Rules of Procedure that the action was inadmissible. In accordance with Article 91(3) of the Rules of Procedure, the Court decided to open the oral procedure in order to examine the objection.

12 Reference is made to the Report for the Hearing for a fuller account of the facts and the legal context of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

13 In support of the objection of inadmissibility, the Commission contends that the applicants are neither directly nor individually concerned by the contested regulation.

14 The applicants submit that, firstly, their position is directly affected by the contested regulation because the competent national authorities have no discretion in applying the amendments at issue. Secondly, the fact that the applicants had improvement plans which were presented and approved before the contested regulation was adopted differentiates them from all other producers in the nut and locust bean sector. Therefore they constitute a limited class of producers whose

identity is said to have been known to the Community authorities in so far as, before a particular date, they carried out a particular formality, namely presentation of approved improvement plans before the contested amendments were adopted. In addition, the amendments made by the contested regulation to the aid scheme were due to the applicants' situation, in that the Commission intended to reduce the cost of the operation due to the number of producers' organizations set up and the amount of aid applied for.

15 In order to give a ruling on the Commission's objection of inadmissibility, it must be observed that the second paragraph of Article 173 of the Treaty enables any natural or legal person to institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

16 Since the present action seeks the annulment of a provision in a regulation, it must be ascertained whether the contested measure is of direct and individual concern to the applicants.

17 As to the question whether applicants are individually concerned, the Court has consistently held that the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, for example, Case 123/77 *UNICME* v *Council* [1978] ECR 845, and Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941).

18 The contested provision of Regulation No 1304/91 serves to amend for the future, for all producers' organizations, certain detailed rules for applying aid for the implementation of improvement plans in the nut and locust bean sector by laying down more stringent conditions for applications by producers to change their

plans in the course of execution, to receive annual instalments of aid and to draw advances in respect of such aid.

19 Consequently this provision, far from affecting the applicants by reason of certain characteristics which are particular to them or a factual situation which differentiates them from all other producers, is addressed in general and abstract terms to indeterminate classes of persons and applies to objectively determined situations.

20 The contested regulation does not specifically relate to the applicants, but concerns them only in their objective capacity as producers' organizations in the sector in question, in the same way as any other producer who is, actually or potentially, in the same situation.

21 In particular, the applicants' allegation that their plans were approved without objections being raised by the Commission, which it would have been entitled to do, cannot distinguish them with regard to the contested provision of the regulation in question because that provision does not affect the applicants in a manner different from all the other traders in the sector.

22 The provision applies in the same way to all producers' organizations whose improvement plans were approved before the regulation was adopted or will be approved after that date.

23 Furthermore, there is no concrete indication in the contested regulation that the measures in question were adopted specifically taking account of the applicants' plans.

Therefore the contested provision is not of individual concern to the applicants within the meaning of the second paragraph of Article 173 of the Treaty and the action must be dismissed as inadmissible.

Costs

25 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicants have been unsuccessful, they must be ordered to pay the costs, including those relating to the application for interim relief.

On those grounds,

THE COURT

hereby:

1. Dismisses the application as inadmissible;

2. Orders the applicants to pay the costs, including those relating to the application for interim relief.

Due Kakouris Rodríguez Iglesias Zuleeg

Murray Mancini Joliet

Schockweiler Moitinho de Almeida Grévisse Kapteyn

Delivered in open court in Luxembourg on 15 June 1993.

J.-G. Giraud O. Due

Registrar President